

**Hardwick Company, Inc. and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 583.** Cases 10-CA-16384 and 10-CA-16524

August 11, 1982

## DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

On March 30, 1982, Administrative Law Judge Leonard N. Cohen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions<sup>1</sup> of the Administrative Law Judge and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Hardwick Company, Inc., Bessemer and Birmingham, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> The General Counsel excepts to the failure of the Administrative Law Judge to find, as alleged in the complaint, that Respondent's failure to recall certain laid-off employees constituted a violation of Sec. 8(a)(3) and (1) of the Act. On the basis of the entire record, we find that the General Counsel failed to produce sufficient evidence to establish a *prima facie* case that the laid-off employees' protected conduct was a motivating factor in Respondent's decision not to recall the employees. Accordingly, we dismiss the complaint insofar as it alleges that Respondent violated the Act by failing to recall the laid-off employees.

## DECISION

### STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: These matters were heard before me on September 10 and 11, 1981, in Birmingham, Alabama, pursuant to complaints issued on January 7 and 29, 1981, in Cases 10-CA-16384 and 10-CA-16524, respectively, by the Regional Director for Region 10 of the National Labor Relations Board. The complaints which were consolidated for hearing by order dated March 13, 1981, are based on

charges filed on October 31 and December 16, 1980,<sup>1</sup> respectively, and allege, *inter alia*, that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act by (1) interrogating its employees, soliciting its employees to withdraw their support of the Union, and threatening its employees with economic reprisals because of their union activities; (2) reducing the hours of its employees by transferring work from its Bessemer, Alabama, facility to another facility because of its employees' union activities; and (3) laying off five employees on October 30 and two additional employees in early November because of their union activities. Respondent filed a timely answer in which it denied the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which were filed by both the General Counsel and Respondent, have been carefully considered.

Upon the entire record of the case and from my observation of the witnesses and their demeanor, I make the following:

## FINDINGS OF FACT

### I. BUSINESS OF RESPONDENT

Hardwick Company, Inc., herein called Respondent, is, and has been at all times material, an Alabama corporation with offices and principal place of business located in Birmingham, Alabama, where it is engaged in steel fabrication. During the past calendar year, which period is representative of all times material, Respondent sold and shipped from its Birmingham, Alabama, facility goods valued in excess of \$50,000 to customers within the State of Alabama who in turn sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Alabama. Accordingly, Respondent admits, and I find and conclude, that at all times material herein Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION

Respondent admits, and I find, that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 583, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Fact*<sup>2</sup>

#### 1. Background

For approximately 50 years, Respondent has fabricated and processed steel at its Birmingham, Alabama, facility. In mid-1979, when Respondent was experiencing an

<sup>1</sup> Unless otherwise stated, all dates referred to are 1980.

<sup>2</sup> Except where specifically noted, the material facts are not in dispute.

upturn in its business, it opened a smaller facility in the nearby city of Bessemer, Alabama, to handle the overflow of orders. Respondent essentially operates as a "job shop," filling each order to the customer's specification. As such, Respondent does not maintain any inventory of finished products or manufacture any items for sale "off the shelf." Although both facilities can generally perform the same type of functions, due to the significantly larger size of both the physical plant and the equipment itself, the larger orders are handled at the Birmingham facility. At all times material the Birmingham facility has employed approximately 35 employees. While the employment level at Bessemer reached a high of approximately 25 employees shortly after it opened, by the fall of the following year, that number had been reduced to approximately 16 employees.

In mid-October employees at both facilities commenced an organizing effort by soliciting signatures of their fellow employees on union authorization cards. On October 23 the Union filed a petition in Case 10-RC-12257 seeking to represent a bargaining unit limited to the Bessemer facility; and on Friday, October 24, Respondent received a copy of the petition from the Board. On November 7 the petition was withdrawn without prejudice, and on December 15 a second petition in Case 10-RC-12282 was filed concerning the same bargaining unit employees. On February 6, 1981, an election was held with the result that eight employees cast ballots for the Petitioner and two against with three challenged ballots.

## 2. The alleged independent 8(a)(1) violations

On the morning of Friday, October 24, Harold Eugene Wilson, one of Respondent's owners and the individual with general responsibility for production at both facilities, received a telephone call while in his Birmingham office from a former employee. This individual informed Wilson that the employees were trying to organize. He further identified Dave Murkeson as the employee who was passing out the cards at Birmingham and stated that he had also heard through rumor that James Taylor and Bill Finerty were doing the same at Bessemer. Immediately following the call, Wilson called both George Parsons, the general supervisor of the Bessemer plant, and David Hardwick, the general supervisor of the Birmingham plant, and relayed to them what he had just been told. Both Parsons and David Hardwick stated that they did not know anything about any organizing effort. Wilson instructed both to try and find out what they could about the rumor.

During the period immediately following these telephone calls and continuing into at least the early portion of the following week, Respondent, through Parsons, Wilson, and to a lesser degree David Hardwick, embarked on a course of conduct which the General Counsel alleges not only constitutes multiple, separate, and independent violations of Section 8(a)(1), but also supplies evidence of Respondent's unlawful motivation in making its layoffs on October 30 and on November 6 and 13.

Respondent does not deny that Parsons and David Hardwick engaged several employees in conversations about the organizing effort on Friday, October 24. In

fact, Respondent did not call either as witnesses to deny such testimony. Respondent does, however, contend that any conversations Parsons may have had with employees about the Union after October 24 were not attributable to Respondent since they were direct violations of orders.<sup>3</sup> In this regard, Robert Hardwick, Respondent's president, testified that when he was informed of the organizing effort by Wilson during the day on Friday, October 24, he immediately contacted Respondent's attorney, who advised him to instruct all members of management not to interrogate the employees about their union activity, threaten them with reprisals, engage in surveillance of their activities, or make promises to them. Robert Hardwick further testified that later that same day he personally relayed the advice of counsel to David Hardwick, Wilson, and Parsons.

### a. Conduct of Parsons

During the course of Friday, October 24, Parsons approached on an individual basis at least six different Bessemer employees and questioned them generally about their knowledge of the organizing campaign. In these conversations Parsons asked the employees if and where they had signed the union cards and who had given them the cards. All of the employees indicated they had indeed signed authorization cards on behalf of the Union. One employee identified James Taylor and another employee identified Bill Finerty as the individual who respectively gave each his card. The remaining four employees questioned by Parsons on October 24 did not identify the employee who gave them the authorization cards.

One of these employees, David Cook, testified that Parsons approached him for a second time about an hour or two after the first conversation. On this latter occasion Parsons asked Cook what Cook would do if they closed the shop down. Cook answered he did not know.

Parsons also spoke to employee Cecil James on two separate occasions on October 24. On the second such occasion Parsons asked James if he were on company time when he signed the card. James told him that he was in the parking lot of a local lounge when he signed his card. Parsons responded that he had been informed by another employee that James had signed his card during working hours. Parsons then stated that he was going to close the plant down and he (Parsons) and a senior machine operator would go back to the Birmingham shop and the rest of the employees would be out of work.

On the following Tuesday, Parsons had a conversation with Cecil James, Ronnie Wilcox, and Jackie Deason in which he told them that Respondent would be shutting down the shop in the next day or two because of the Union. When James asked if they could meet with Wilson, Parsons answered that it was too late because Wilson would not have a union in the shop. Sometime during the course of this discussion, Parsons indicated

<sup>3</sup> Respondent's contentions regarding the allegations charged to Wilson will be dealt with *infra*.

that he either presently thought or had earlier thought that Cecil James was an instigator.<sup>4</sup>

Wilcox also testified that he had an earlier conversation that same day with Parsons. On this occasion Parsons approached a group of employees and said that they were going to close the shop down and shut the gates on the following day on account of the signing of the union cards. Parsons added that Wilson had talked to an attorney in Atlanta and said that the only way Respondent could keep the shop open was to get a petition signed by all the men who had signed the cards withdrawing from the Union. Parsons then added that Wilson did not want a union in the shop and would not have one. Parsons added that Respondent use as an excuse that there was not enough work to keep the shop open.<sup>5</sup>

Bill Finerty, a Bessemer employee, testified that on October 25 he called Parsons from home to find out if a rumor he had heard to the effect that he was going to be fired on Monday was true. Parsons answered that it seemed that Finerty had all the answers. Parsons then stated that Finerty was stupid for putting his job on the line and it was going to cost 16 other people their jobs. Parsons then added that he, Parsons, was going to have to drive extra miles to go to the Birmingham plant because Wilson would close the Bessemer plant down. Parsons stated that Respondent planned to start closing Bessemer down on the following Wednesday.

#### *b. Conduct of David Hardwick*

According to Birmingham employee John Murkeson, he was called into David Hardwick's office about a week or two before the October 30 layoffs. Hardwick asked him if he knew anything about the Union going on. When Murkeson stated that he did, Hardwick asked him who other than himself and James Taylor was behind it. Murkeson answered that he knew James Taylor had been passing cards about at the Bessemer shop, but that he, Murkeson, did not have anything to do with it. Hardwick asked who else was involved, and Murkeson mentioned the name of Bill Finerty. Hardwick responded that that sounded like Finerty. Hardwick then stated that there was not going to be any union, that it had been tried once before when his father ran the Company, and that his father would not have it then and he was not going to have it now. Hardwick added that before he would let a union come in he would close the door. Murkeson answered that Respondent could not do that right then. Hardwick said that it did not matter, Respondent could close the door down and just make an excuse to keep the Union from coming in. Again, Hardwick asked Murkeson who was involved. Murkeson responded by asking Hardwick who had been telling lies about him instigating the Union at Birmingham. Hardwick said that he could not answer, and Murkeson in turn said that he could not tell Hardwick whose idea it was if Hardwick could not tell him who was telling lies about him. Hardwick then offered to tell Murkeson who

was telling lies about him if Murkeson would tell him who were the instigators. When Murkeson agreed, Hardwick said that Jim Beasley, a former employee, had mentioned that Murkeson was the instigator. Murkeson then told Hardwick that he had heard through rumor that the other instigator was Cecil James.

#### *c. Conduct of Wilson*

Three employee witnesses, Carl Harris, Cecil James, and James Johnson, each testified that they had conversations with Wilson at the Bessemer plant regarding the Union. Harris testified that on Saturday, October 25, Wilson approached him and asked if Harris had heard about petitions circulating in the shop. Harris answered that he had. Wilson then asked if Harris had signed a card, and Harris answered that he had. Wilson then asked him who had given him the card. Harris answered Bill Finerty. Wilson asked if James Taylor was responsible for beginning the Union, and Harris responded no, that it had been a joint venture among everyone. Wilson then stated that he would not have a union in his shop and before he would do that, he would close the shop, put it up for sale, and move the equipment back to Birmingham, possibly as early as the upcoming Wednesday. Wilson then added that it would be bad with Christmas coming and the men out of work.

James Johnson testified that, some time after October 24, he was present at the plant with Carl Harris when Gene Wilson approached them and stated that he had worked hard all his life to have what he had, that he was not going to have the Union come in, and that he would close the plant first.

Cecil James testified that he had a conversation with Wilson on Saturday, October 25. According to James, during the course of the conversation, Wilson stated that he was going to close the place down and have a for sale sign up on it by Wednesday. Wilson stated that he was not going to have the Union come in there and tell him how to run his business, that he worked all his life to have a place like this and, if that is what the employees wanted, he would just close down.

Wilson testified that he went to the Bessemer plant on the morning of Saturday, October 25, and spoke to Arthur Clemons and Carl Harris and another unidentified employee around lunchtime. According to Wilson's account, during the course of the general conversation, he stated that he heard that the fellows at Bessemer thought they needed a union and he wanted to ask them why. He then asked them if the Company mistreated anybody. One of the employees answered no, the Company had not mistreated anyone, but they were doing it for the money. Wilson told the employees that he could not believe it.

Wilson admitted having a conversation with Cecil James at the Bessemer plant that same morning. According to Wilson, however, the conversation had nothing to do with the Union, but involved some hunting traps that his son had borrowed from James. According to Wilson, when, during the course of the conversation, the subject of the decline in work was mentioned, he made the following statement: "Man, I tell you if something don't

<sup>4</sup> The above account is based on the generally corroborative versions of James and Wilcox. While there are some uncertainties and variances in detail, I do not find such as unusual or alarming.

<sup>5</sup> The other employees who Wilcox places during this conversation, Jackie Deason, Lester Grimes, and Alvin Douglas, did not testify.

pick up by the middle or the end of next week, we're going to have to shut this place down and give it back to the damn Indians." Wilson denied ever having a conversation about the Union with employee Mike Johnson.

I credit the above-recited accounts of Harris, James, and Johnson over the account by Wilson. While their testimony may have been at times confused on certain details, each of these employees impressed me as attempting to honestly recall conversations in question. Moreover, their versions of Wilson's comments are quite similar in nature to the undenied comments made both before and after this date by Parsons. Additionally, both Harris and Johnson were still employed by Respondent at the time of the hearing. In these circumstances, it would be unlikely that their testimony, which was adverse to Respondent, would be false. See *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified on other grounds 369 F.2d 89 (5th Cir. 1962).

#### d. Recent alleged 8(a)(1) violations

Cecil James testified that, about 3 weeks prior to the instant hearing, Parsons approached him while at work and asked if he had met with "that lawyer"<sup>6</sup> the previous night. When James said that he had, Parsons asked him what he had been told. James answered that the lawyer thought that the Company had wanted to settle the case, but that she did not know anything definite at that time.

James testified that about 1 week later Parsons again approached him and on this occasion asked if he minded telling Parson who had had the union cards. James answered that it had been James Taylor and Bill Finerty. Nothing further was said.

#### 3. Transfer of machinery

The complaint alleges and the General Counsel contends throughout the hearing that Respondent, in violation of Section 8(a)(3) and (1), transferred machinery from its Bessemer shop to its Birmingham shop with the result that the hours of work of the Bessemer employees were reduced. The General Counsel's current position on this allegation is not clear since, in her post-hearing brief, counsel only notes in passing this subject as an issue and at no subsequent time during her brief mentions it further. In any event, the facts regarding this issue are clear and are not in dispute.

On either October 27 or 28 Respondent moved a large angle roller machine from its Bessemer plant to its Birmingham facility for the purpose of repairing it. Concurrent with this transfer, Respondent moved a drill press from the Birmingham plant to the Bessemer plant. The Bessemer plant employee who had been running the angle roller immediately commenced operating the drill press. This employee lost no work as a result of the transfer of this machinery.

#### 4. The layoffs

On the afternoon of October 30, Wilson and Parsons called together the Bessemer employees and announced

that five employees, Cecil James, Michael Johnson, Johnny Seales, Ronnie Wilcox, and Terry Wilson,<sup>7</sup> were being laid off. In making the announcement, Wilson told the employees the layoffs were due to lack of work and had nothing to do with the "problems" that they had at the plant. Wilson did state, however, that because of these problems, Respondent was changing the method of selecting employees from a policy of retaining the most qualified to a policy of making the layoffs solely on the basis of seniority. The laid-off employees, who apparently were the five least senior employees, were urged during this meeting to seek employment elsewhere.

Employee Taylor testified that during the meeting Parsons stated that the employees who were not being laid off could not be late or absent or sick without a doctor's excuse. Employee Finerty testified that Wilson stated during the meeting that, if an employee were 1 minute late or missed a day for any reason without a doctor's excuse, he would be terminated. None of the other five employees who testified that they were present at this meeting mentioned any such comments by either Wilson or Parsons.<sup>8</sup> Wilson specifically denied that either he or Parsons discussed lateness or tardiness at this meeting.<sup>9</sup>

On November 6 and 13, Respondent laid off bargaining unit employees David Cook and Arthur Clemons, respectively. These layoffs, like the preceding ones of October 30, were made pursuant to seniority among Bessemer employees.

#### 5. Respondent's economic defense to the layoffs of October 30 and November 6 and 13

Commencing toward the end of the second calendar quarter of 1980 and continuing throughout that entire year, Respondent experienced a substantial decline in its business. The total sales volume of Respondent's operations during the first half of 1980 was approximately \$1.55 million. This figure was nearly identical with the figure for the second half of 1979. However, during the second half of 1980, this figure declined to approximately \$1.18 million. Concurrent with the loss of sales, the number of hours worked by all employees during the second half of 1980 fell sharply. For example, during the first 5 months of 1980 the total number of hours worked by all employees ranged from a high of approximately 9,000 in February to a low of approximately 7,400 hours in March. In June the figure fell to approximately 5,700 hours. Although there was a slight improvement during

<sup>7</sup> Son of Gene Wilson.

<sup>8</sup> Of these five, three—Wilcox, James, and Johnson—were informed of their layoff at this same meeting.

<sup>9</sup> In resolving the question of whether either Parsons or Wilson made certain comments or threats regarding attendance at the October 30 meeting, I am not persuaded that the accounts of Taylor and Finerty discussed above are credible. In reaching this conclusion, I rely on the following factors: (1) the absence of any corroboration by the other five witnesses to the discussion; (2) the inconsistencies between Taylor and Finerty's version; (3) the inherent improbability that these statements would be made at the same meeting in which Respondent took pains to insure employees that the layoffs had nothing to do with the "problems" they were then experiencing; and (4) Taylor's demonstrated inability to accurately recall other facts, such as the amount of hours worked by the Bessemer employees immediately following these layoffs.

<sup>6</sup> Counsel for the General Counsel.

the months of July and August, the figure fell again to a near June level during September. The hours worked for the month of October improved dramatically to approximately 8,400 hours. However, a sharp decline was experienced in November when the total number of hours fell back to the June level. It was this economic situation which Respondent contends warranted the reductions in question.

Although the October 30 layoffs involved a significant number of the Bessemer employees, it was not the first such layoff Respondent made during 1980. In March of that year Respondent laid off an employee who was never recalled. In mid-June when, as noted above, the sales volume decreased, Respondent laid off four additional employees. All four, which included alleged discriminatees Johnson, Cook, and Clemons, were recalled sometime during July and August. In late September, Respondent made four more layoffs, including the recently reinstated Cook and Johnson. Of these four, three, again including Cook and Johnson, were reinstated early in October. On October 2, Respondent laid off and never replaced yet another employee. This was the final layoff prior to the ones in question. Of the five alleged discriminatees laid off in late October and early November, two—Johnny Seals and Cecil James—were recalled in late November and were still working at the time of the Board election.<sup>10</sup>

Several of the General Counsel's witnesses, including alleged discriminatees Johnson and Wilcox, testified that in the days immediately preceding their October 30 layoff, they were engaged in general cleanup work while awaiting orders for processing.<sup>11</sup>

These layoffs were not the only cost-saving measure Respondent instituted during 1980. Respondent had historically given across-the-board wage increases to its employees every 6 months, with one coming in June and another in December. In June 1980, Respondent, due to a decrease in sales, omitted for the first time giving this raise.<sup>12</sup>

## B. Conclusions

### 1. The 8(a)(1) allegations

The credible evidence establishes that immediately upon being informed of its employees' union activities, Respondent, through Parsons, David Hardwick, and Wilson, embarked on a campaign to undercut the Union's support among its employees and to thwart the organizing effort at its inception. Respondent initially attempted to accomplish this purpose by questioning its employees about whether they signed union cards and by

attempting to ascertain the identities of the union "instigators."

A supervisor's questioning employees regarding their union sympathies is coercive because such questioning conveys an employer's displeasure with the employees' union activities and thereby discourages such activities in the future. Further, the coercive impact of these questions is not diminished by either the employees' open union support or by the absence of attendant threats. *Gossen Company, a Division of United States Gypsum Company*, 254 NLRB 339 (1981). Here, the questioning of the employees was accompanied by clear and specific threats of economic reprisals. Parsons and Wilson both told employees that, because of their union activities, Respondent would shut down, permanently close, and/or sell the Bessemer facility with the result that they would lose their jobs. At one point during the following week, Parsons indicated to the employees that the only way this action could be forestalled would be for the employees to sign a petition withdrawing their support of the Union. In view of Wilson's conduct in uttering certain of these threats on October 25, I find Respondent's assertion that it should not be held accountable for any conduct of Parsons occurring after October 24 to be totally without merit. Accordingly, I find and conclude that Respondent unlawfully interrogated its employees about their union activities as alleged in the complaint, as amended.<sup>13</sup> I further find and conclude that Respondent has unlawfully coerced and threatened its employees with loss of employment because of their union activities.<sup>14</sup> Additionally, I find and conclude that Parsons' solicitation to the employees to withdraw their support of the Union as a means of saving their employment unlawfully interferes and coerces its employees. *Smith's Complete Market of Tular County, Inc., d/b/a Smith's Complete Market*, 237 NLRB 1424, 1428 (1978).

### 2. The layoffs

The Board, in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), set forth the applicable test in all cases alleging violations of Section 8(a)(3) and (1) which turn upon the employer's motivation. First, the General Counsel is required to make out a *prima facie* showing sufficient to support the inference that the protected conduct was a "motivating factor" in the employer's decision. Once that is established, the burden then shifts to the employer to demonstrate that the same actions would have taken place even in the absence of protected conduct.

<sup>10</sup> Despite the General Counsel's assertion, no evidence was presented that Respondent deviated from following seniority on recalls.

<sup>11</sup> A large number of overtime hours were by the Bessemer employees in the last week of October. This apparent inconsistency is explained by the fact that Respondent was then in the process of completing a large order. When that order was done, many of the employees were left with no production work.

<sup>12</sup> Robert Hardwick testified that to soften the blow of not getting an across-the-board increase, all employees were given at that time in June a 1-week salary bonus. No figures were offered regarding how much money Respondent saved by omitting giving the June pay raise.

<sup>13</sup> Included in my findings are the allegations relation to Parsons' questioning of employee James in the month prior to the instant hearing. Respondent has offered no legitimate reason for Parsons' inquiries. As with the other instances of interrogation, Parsons' questions on these occasions have the effect of interfering with James' exercise of his Sec. 7 rights. *Richard T. Furtney and Naomi P. Furtney, a Co-partnership d/b/a Mr. F's Beef and Bourbon*, 212 NLRB 462, 466 (1974).

<sup>14</sup> The complaint specifically alleges that Wilson also threatened employees at the October 30 meeting with more stringent enforcement of its attendance policy. As set forth above, I have not credited those portions of the testimony of Taylor and Finerty relating to this issue. Accordingly, I recommend that that complaint allegation be dismissed.

The General Counsel contends that the clearly demonstrated strong union animus, when coupled with the timing of the layoffs, some 6 days after Respondent was informed of the petition being filed, creates a strong suspicion of Respondent's unlawful motivation. This argument has appeal if one limits the inquiry to those factors alone. However, when the layoffs are viewed in the context of the entire record, any doubts with regard to Respondent's motivation must be resolved against the General Counsel.

Months before the advent of the organizing campaign, Respondent began experiencing a substantial decline in its sales. Financial conditions had deteriorated so badly that in June it was forced to omit for the first time the employees' semiannual raise. Additionally, in the 4 months preceding the October 30 layoff, Respondent laid off seven different employees from its Bessemer operation.

In comparing the layoffs alleged as unlawful with the layoffs which preceded any union activity, only one major difference is readily apparent. The selection of employees for the October 30 and November layoffs was made on the basis of seniority rather than subjective evaluation by Parsons and Wilson. Respondent's president, Robert Hardwick, credibly testified that this change of procedure was recommended by Respondent's attorney as a way of safeguarding against being accused of discriminatorily selecting the union activists for layoff. The General Counsel does not, as I understand it, contend that Respondent changed its procedures regarding the layoff selection process in an effort to catch the leading adherents in its net. In any event, the record evidence would not support such a finding. From early on in the conversations between employees and Parsons and David Hardwick, it became clear from several sources that the two Bessemer employees most active in the organizing campaign were James Taylor and Bill Finerty. Yet, neither Taylor nor Finerty was included in the seven alleged unlawful layoffs. Of the seven, only in Cecil James' case does the evidence support a finding that Respondent knew or had reason to believe that he may have been one of the "instigators." In the cases of Johnson, Wilcox, Cook, and Clemons, all Respondent knew was that they had each signed authorization cards. Additionally, Johnson, Cook, and Clemons had all been laid off and recalled on one or more occasions preceding the October 30 layoff. No evidence was presented that either Seales or Wilson, the son of one of Respondent's owners, even signed authorization cards. Accordingly, for the reasons set forth above and notwithstanding the well-established union animus and the timing of Respondent's action, I am persuaded that the General Counsel has not met its burden of establishing that protected conduct was a "motivating fact" in Respondent's decision to lay off employees on October 30 and November 6 and 13. *Mini-Industries, Inc.*, 255 NLRB 995 (1981); *Colorado Forge Corporation*, 260 NLRB 25 (1982).

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's oper-

ations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and that it take certain affirmative actions designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in these cases, I make the following:

#### CONCLUSIONS OF LAW

1. Hardwick Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 583, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union activities, sympathies, and desires, Respondent violated Section 8(a)(1) of the Act.

4. By threatening employees with shutdown, closure, and/or sale of the Bessemer plant because of the employees' union activities, Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees with discharge because of their union activities, Respondent violated Section 8(a)(1) of the Act.

6. By soliciting employees to sign a petition withdrawing their support of the Union as a means of saving their jobs, Respondent violated Section 8(a)(1) of the Act.

7. Respondent did not violate the Act when it transferred the angle roller machine from the Bessemer, Alabama, facility to the Birmingham facility.

8. Respondent did not violate the Act as alleged when it laid off employees on October 30 and November 6 and 13, 1980.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>15</sup>

The Respondent, Hardwick Company, Inc., Bessemer and Birmingham, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities, sympathies, and desires.

<sup>15</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Threatening its employees with shutdown, closure, and/or sale of the Bessemer, Alabama, facility because of their activities on behalf of the Union.

(c) Threatening its employees with discharge because of their activities on behalf of the Union.

(d) Soliciting its employees to withdraw or resign from membership in the Union.

(e) Any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its Bessemer and Birmingham, Alabama, facilities copies of the attached notice marked "Appendix."<sup>16</sup> Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER RECOMMENDED that insofar as the complaints allege matters which I have not found herein to have violated the Act, the allegations are hereby dismissed.

<sup>16</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activity together for the purpose of collective bargaining or other mutual aid or protection
- To engage in activity together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that interferes with, restrains, or coerces employees with respect to these rights. More specifically,

WE WILL NOT interrogate our employees concerning their union activities, sympathies, and desires.

WE WILL NOT threaten our employees with plant shutdown, closure, and/or sale because of their activities on behalf of the Union.

WE WILL NOT threaten our employees with discharge because of their activities on behalf of the Union.

WE WILL NOT solicit our employees to withdraw or resign from membership in the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

HARDWICK COMPANY, INC.